

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF YORK AND CITY OF
POQUOSON

NORMAN B. PULLIAM

and

KATRINA L. PULLIAM,

Petitioners.

Case No. 08-1867

In Re: York County Chesapeake Bay Preservation Act Appeal 08-0114, 108 Anchor Lane

SERVE: Alvin K. Russell, Acting Chair
York County Chesapeake Bay Board
3416B Big Bethel Road
Yorktown, VA 23693

Anna Drake
Manager of Environmental Programs
York County Department of Environmental
and Development Services
105 Service Drive
Yorktown, VA 23690-0532

James E. Barnett, Esq.
York County Attorney's Office
224 Ballard Street
Yorktown, VA 23690-0532

PETITION

COME NOW your Petitioners, NORMAN B. PULLIAM and KATRINA L. PULLIAM, (hereinafter "Pulliams") of 108 Anchor Lane, Yorktown, Virginia 23692 (hereinafter "Property"), and respectfully pray that this Honorable Court hear an appeal of the decision of the Chesapeake Bay Board (the "Board") in the matter of Chesapeake Bay Preservation Act ("CBPA") Appeal 08-114, pursuant to York County Code § 23.2-9(d)(2). For their Petition, the Pulliams state as follows:

JONES, BLECHMAN, WOLTZ & KELLY,
P.C.
Attorneys and Counselors at Law
701 TOWN CENTER DRIVE, SUITE 800, P.O. BOX 12888
NEWPORT NEWS, VA 23612-2888
(757) 873-8000 FAX: (757) 873-8103

1. The Pulliams are the owners in fee simple of the real property and improvements located in York County (the "County"), commonly known as 108 Anchor Lane, Yorktown. This property is more specifically described as follows (the "Property"):

All that certain lot, piece or parcel of land, situate lying and being in the County of York, Virginia, known and numbered as LOT EIGHT (8), as shown on that certain plat entitled, "PLAT SHOWING PHYSICAL IMPROVEMENTS TO PROPERTY OF NORMAN B. & KATRINA L. PULLIAM LOT 8 PART OF SHIP POINT FARM, YORK COUNTY, VIRGINIA," dated February 14, 2002, and made by Simmons Newsome, P.C., Surveyors – Planners, duly recorded in the Clerk's Office of the Circuit Court for the County of York, Virginia, as Instrument number: 001996, to which reference is here made.

2. Part of said Property falls within a Resource Protection Area ("RPA") under the CBPA.

3. Between 2005 and 2007, the Pulliams performed extensive work on the Property which required many meetings with the County, resulted in correspondence with the County, and required permits from the County, including construction of a fence around the Property, renovation of the existing home, and landscaping of the Property.

4. On September 7, 2007, the Pulliams completed and submitted a "RESIDENTIAL RPA BUFFER APPLICATION", For: MODIFICATIONS, ALLOWED USES AND EXEMPTIONS, Water Quality Impact Assessment, to York County requesting approval for the construction of a eco-paver walkway to be 4 ½ feet wide (hereinafter "Path"), in the 100 foot resource protected area buffer around Boathouse Creek. The RPA buffer impacts this lot due to its location on the Boathouse Creek and Warlock Cove.

5. Completion and approval of this application was necessary for the Pulliams to proceed with their plans to construct a Path, encompassing approximately 405 square feet in total area.

6. To address potential environmental concerns from York County, the Pulliams researched and located a paver system which has less impact than a standard concrete or mulch walk.

7. This research identified a paver system known as an Eco-Stone, which is a permeable interlocking pavement system that mitigates stormwater runoff through infiltration. See Exhibit "1" entitled *UNI ECO-STONE Permeable Interlocking Concrete Pavement, UNI-GROUP U.S.A., Manufacturers of UNI Paving Stones*, 2008, which is attached hereto and made a part hereof.

8. Since this was new technology to the County, it is upon information and belief that Anna Drake sought the opinion of the Board's guidance for the application.

9. Upon information and belief, it was at that time that the Board established a 3 foot wide maximum application.

10. On September 24, 2007, York County Manager of Environmental Programs, Anna Drake ("Drake"), and York County employee, Kent Henkel, informed the Pulliams, by email, that they would not be permitted to build the 4 ½ foot wide path that they had applied for because of current RPA administrative guidelines.

11. After further correspondences and exchanges between York County and the Pulliams, Drake informed the Pulliams by letter that she had officially decided that a 4 ½ foot wide path could not be built within the RPA.

12. Because of the nature and dimensions of the Property and the reasonable accessibility to the Pulliams' pier, the Pulliams held that a width of 3 feet was inadequate for the Path.

13. In response to these notifications and pursuant to York County Code, the Pulliams appealed Ms. Drake's decision to the Board. After a public hearing on June 12, 2008,

the Board affirmed her decision on the basis that the maximum width of the path must be no wider than 3 feet.

14. The empowering language of the CBPA, specifically Virginia Code § 10.1-2108 and York County Code § 23.1, charges the Board with protection and safeguarding of the waters of the Chesapeake Bay.

15. York County Resolution 08-114A, which is attached hereto and made a part hereof as Exhibit "2", summarizes the discussion and decisions of the June 12, 2008-hearing, and reflects that the Board denied the Pulliams' requested exception because a 4 ½ wide eco-stone path would not be "in harmony with the purpose and intent of the CBPA Act and is of substantial detriment to water quality", along with other justifications.

16. The Board, disregarding their mandate, declined the Pulliams' proposal on an arbitrary and capricious basis to assure that no precedent was being established for 4 ½ foot walkway. See Exhibit "3" entitled "YORK COUNTY WETLANDS AND CHESEPEAKE BAY BOARD – Hearing Transcript – Chesapeake Bay Exception 08-114, Mr. & Mrs. Pulliam, 108 Anchor Lane", which details this decision, and is attached hereto and made a part hereof.

17. Prior to the Pulliams' request, the Board had arbitrarily established a 3 foot walk way maximum which did not consider the positive attributes of a water and runoff collection walk.

18. The Board has in the past required just such a type of collection and slow discharge feature to be installed to mitigate the negative impacts of requested construction by homeowners within the RPA.

19. In the present case, the Board failed to recognize the positive attribute while acknowledging that the 3 foot wide standard was "arbitrary".

20. The Board has refused to explore or address this new technology, thereby elevating the protection of the RPA and procedural precedent to the potential detriment of the Bay for which they are empowered to protect and preserve, and for which the RPA is designed to be utilized to protect.

WHEREFORE, the Petitioners, Norman B. Pulliam and Katrina L. Pulliam, respectfully prays for this Honorable Court to grant an evidentiary hearing and enter an Order allowing them to utilize the new technology and construct the walk as proposed in the Resource Protection Area.

Respectfully Submitted,

**NORMAN B. PULLIAM and
KATRINA L. PULLIAM**

By: 

Of Counsel

Michael B. Ware, Esq., VSB #25401
JONES, BLECHMAN, WOLTZ & KELLY, P.C.
701 Town Center Drive, Suite 800 (23606)
P.O. Box 12888
Newport News, Virginia 23612-2888
(757) 873-8076
(757) 873-8053 -- Facsimile
Email address: mware@jbwk.com
Counsel for Petitioners

JONES, BLECHMAN, WOLTZ & KELLY,
P.C.
Attorneys and Counselors at Law
701 TOWN CENTER DRIVE, SUITE 800, P. O. BOX 12888
NEWPORT NEWS, VA 23612-2888
(757) 873-8000 FAX: (757) 873-8103

(438431)